

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re)	
CHRISTEE L. LESCH,)	Bankruptcy No. 99-42312 NCD
Debtor.)	
)	
CHRISTEE L. LESCH,)	
Plaintiff,)	
vs.)	Adversary No. 04-4189 NCD
)	
ILLINOIS STUDENT ASSISTANCE)	
COMMISSION, UNITED STATES)	
DEPARTMENT OF EDUCATION,)	
UNIVERSITY OF MINNESOTA,)	
AND SALLIE MAE SERVICING,)	
Defendants.)	

NOTICE OF HEARING AND MOTION
TO DISMISS PLAINTIFF'S COMPLAINT
AGAINST THE UNITED STATES DEPARTMENT OF EDUCATION

COMES NOW the Defendant United States Department of Education (hereinafter "DOE"), by and through its attorneys, Thomas B. Heffelfinger, United States Attorney for the District of Minnesota and Roylene A. Champeaux, Assistant U.S. Attorney, and pursuant to Fed. R. Bankr. P. 7012 and Fed. R. Civ. P. 12(b)(2), (4) and (6) respectfully requests this Court dismiss the United States Department of Education from the above-captioned adversary proceeding. This Motion is based on the accompanying Memorandum of Law, the Declaration of Lynda D. Faatalale, Loan Analyst, and Affidavit of Roylene A. Champeaux.

The Court will hold a hearing on this motion on September 22, 2004 at 10:30 a.m. before the Honorable Nancy C. Dreher in Courtroom 7 West, United States Bankruptcy Court, United States Courthouse,

300 South Fourth Street, Minneapolis, Minnesota 55415 or as soon thereafter as counsel may be heard.

Any response to this motion must be filed and delivered not later than September 17, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 13, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

WHEREFORE, the United States requests that the Plaintiff's Adversary Complaint be dismissed as to the United States Department of Education.

Dated: August 18, 2004

THOMAS B. HEFFELFINGER
United States Attorney

/e/ Roylene A. Champeaux
BY: ROYLENE A. CHAMPEAUX
Assistant U.S. Attorney
Attorney ID Number 154805
600 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415
(612) 664-5685

Attorneys for the Defendant
U.S. Department of Education

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Plaintiff,)
) Adversary No. 04-4189 NCD
vs.)
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ILLINOIS STUDENT ASSISTANCE)
COMMISSION, UNITED STATES)
DEPARTMENT OF EDUCATION,)
UNIVERSITY OF MINNESOTA,)
AND SALLIE MAE SERVICING,)
)
Defendants.)

**MEMORANDUM OF THE
UNITED STATES DEPARTMENT OF
EDUCATION IN SUPPORT OF MOTION TO DISMISS**

I. INTRODUCTION

This Memorandum is submitted in support of the Motion of the United States Department of Education to dismiss the United States Department of Education from the above-entitled action.

II. PRELIMINARY STATEMENT

The Plaintiff filed this Adversary Proceeding on July 1, 2004, seeking to discharge certain educational loans pursuant to 11 U.S.C. 523(a)(8). The Plaintiff's Complaint alleges that the repayment of these loans would impose an undue hardship on the Plaintiff.

III. STATEMENT OF FACTS

The Defendant United States Department of Education does not hold any of the loans referenced in Plaintiff's complaint (See Declaration of Lynda D. Faatalale, Loan Analyst attached hereto as Exhibit A.)

The United States Department of Education has not been properly served with the Summons and Complaint as the United States Attorney's Office for the District of Minnesota has not been properly served. (See Affidavit of Roylene A. Champeaux attached hereto as Exhibit B.)

IV. ARGUMENT

As the Defendant United States Department of Education does not hold any of the loans referenced in Plaintiff's complaint and as the United States Department of Education has not been properly served with the Summons and Complaint, the United States Department of Education is entitled to be dismissed from this action.

V. CONCLUSION

Accordingly, the Defendant United States Department of Education respectfully requests that the Plaintiff's complaint be dismissed as to the Defendant United States Department of Education.

Respectfully submitted,

Dated: August 19, 2004

THOAMS B. HEFFELFINGER
United States Attorney

/e/ Roylene A. Champeaux
BY: ROYLENE A. CHAMPEAUX
Assistant U.S. Attorney
Attorney ID Number 154805
600 United States Courthouse
300 South Fourth Street
Minneapolis, Minnesota 55415
(612) 664-5685

Attorneys for the Defendant
U.S. Department of Education



U.S. DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
50 UNITED NATIONS PLAZA - REGION IX
SAN FRANCISCO, CA 94102-4987

SAN FRANCISCO SERVICE CENTER

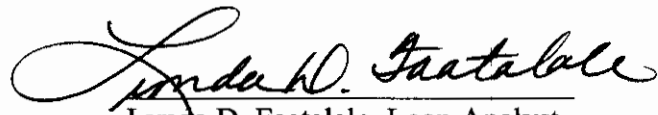
DECLARATION OF LYNDA D. FAATALALE

Comes now, Lynda Faatalale and declares as follows:

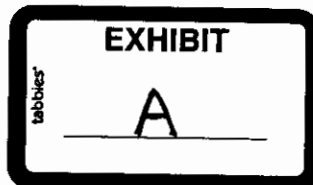
1. That I am a Loan Analyst of the Litigation Branch for the Department of Education, Office of Postsecondary Education, Region IX, San Francisco, California.
2. That as a Loan Analyst, I am the custodian of all records kept by the Department of Education concerning or relating to defaulted Guaranteed Student Loan (GSL), National Defense (NDSL) and Federally Insured Student Loan (FISL) accounts.
3. According to the National Student Loan Data System (NSLDS), Ms. Christee Lucas-Lesch, social security number 5715. Illinois Student Assistance Commission is the guarantor for the FFEL defaulted consolidation student loan.
4. As of August 16, 2004, the loans have not been assigned to the Department of Education.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on

Date: 8/16/04


Lynda D. Faatalale, Loan Analyst

Lynda Faatalale
Loan Analyst



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

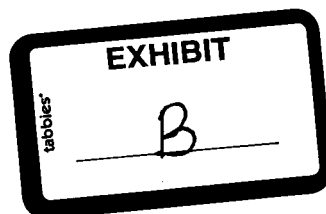
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Plaintiff,)	
)	Adversary No. 04-4189 NCD
vs.)	
)	
ILLINOIS STUDENT ASSISTANCE)	AFFIDAVIT OF
COMMISSION, UNITED STATES)	ROYLENE A. CHAMPEAUX
DEPARTMENT OF EDUCATION,)	
UNIVERSITY OF MINNESOTA,)	
AND SALLIE MAE SERVICING,)	
)	
Defendants.)	
STATE OF MINNESOTA)	
)	ss.
COUNTY OF HENNEPIN)	

Roylene A. Champeaux, being first duly sworn, states as follows:

1. I am an adult over 18 years of age, competent, and have personal knowledge of the facts contained herein.

2. I am an Assistant United States Attorney and one of the attorneys for the Defendant United States Department of Education in the above action.

3. The complaint in this action was filed on July 1, 2004.



4. The complaint (without a Summons) was served upon the United States Attorney's Office on behalf of the United States Department of Education on July 12, 2004, by First Class Mail, as set forth in the return of service contained in the Court's file.

5. Plaintiff Christee L. Lesch failed to serve the United States of America with a Summons.

6. On July 21, 2004 the undersigned sent plaintiff a letter notifying her of the insufficiency of service of process. A copy of this letter is attached as Exhibit A.

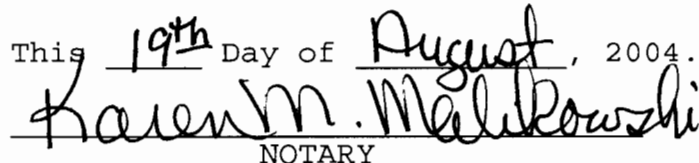
7. No Summons was ever served upon the United States Attorney's Office for the District of Minnesota.

FURTHER THIS AFFIANT SAYETH NOT.

Dated: August 19, 2004


ROYLENE A. CHAMPEAUX
Assistant United States Attorney

Subscribed and Sworn to Before Me

This 19th Day of August, 2004.

NOTARY





U.S. Department of Justice

United States Attorney
District of Minnesota

600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
www.usdoj.gov/usao/mn

(612)664-5600

July 21, 2004

Ms. Christee Lesch
1319 Main Street
Adel, IA 50003

Re: Christee L. Lesch v. Illinois Student Assistance
Comm, et al.

Adversary Case No. 04-4189
Bankruptcy Case No. 99-42312

Dear Ms. Lesch:

Please be advised that I represent the United States Department of Education with regard to the above-entitled adversary proceeding. While this office was served with a copy of the Complaint that was filed on July 1, 2004, the office was not served with a Summons as required by Bankruptcy Rule 7004. Also, the Summons should provide the United States with 35 days to answer pursuant Bankruptcy Rule 7012. In order for the Bankruptcy Court to obtain jurisdiction over the United States Department of Education you, as plaintiff, will need to effect proper service, in other words service that complies with the Rules of Bankruptcy Procedure.

If you have any questions or wish to discuss this matter, please call me at (612) 664-5685.

Sincerely,

THOMAS B. HEFFELFINGER
United States Attorney

Roylene A. Champeaux
BY: ROYLENE A. CHAMPEAUX
Assistant U.S. Attorney

cc: Vanessa Santos, Esq. - ED, OGC

RAC/km

AFFIDAVIT
EXHIBIT A

UNITED STATES BANKRUPTCY COURT
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COMMISSION, UNITED STATES)
DEPARTMENT OF EDUCATION,)
UNIVERSITY OF MINNESOTA,)
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)
Defendants.)

UNSWORN

CERTIFICATE OF SERVICE

I, Karen M. Malikowski, employed by the Office of the United States Attorney, with office address 600 United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota 55415, declare that on August 19, 2004, I served copies of the foregoing Notice of Motion and Motion to Dismiss Plaintiff's Complaint Against the United States Department of Education, Memorandum of the United States Department of Education in Support of Motion to Dismiss, Exhibits A and B (Declaration of Lynda D. Faatalale and Affidavit of Roylene A. Champeaux) and proposed Order on the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid to each entity named below at the address stated below for each entity:

Christee L. Lesch
1319 Main Street
Adel, IA 50003

Brian J. Slovut, Esq.
Associate General Counsel
360 McNamara Alumni Center
200 Oak Street S.E.
Minneapolis, MN 55455

Henry T. Wang, Esq.
William J. Fisher, Esq.
GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.
500 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402

Sallie Mae Servicing
P.O. Box 1000
Lawrence, KS 66044-8000

Sallie Mae Servicing
P.O. Box 9500
Wilkes-Barre, PA 18773-9500

UNSWORN CERTIFICATE OF SERVICE (CONTINUED)

Re: Christee L. Lesch v. Illinois Student
Assistance Commission, et al.

Adversary Case No. 04-4189 NCD

Bankruptcy Case No. 99-42312 NCD

United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is
true and correct.

Executed: August 19, 2004

Signed: /e/Karen M. Malikowski
Karen M. Malikowski

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Defendants.)	

ORDER

This matter came before the Court on the Motion of the United States to dismiss the United States Department of Education as a Defendant in this adversary proceeding. Roylene A. Champeaux, Assistant United States Attorney appeared on behalf of the United States Department of Education. Other appearances were noted on the record.

Based on the pleadings, agreements of counsel and all of the files and records herein,

NOW THEREFORE, IT IS ORDERED that,

The United States Department of Education is dismissed as a Defendant in Adversary Proceeding No. 04-4189.

Dated this ____ day of _____ 2004.

NANCY C. DREHER
United States Bankruptcy Judge